

STATE OF MAINE

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE  
MEASURABLE COST SAVINGS )  
DETERMINED BY DIRIGO HEALTH )  
FOR THE SECOND ASSESSMENT )  
YEAR )

Docket No. INS-06-900 )

**FILING COVER SHEET**

**TO: Superintendent, Bureau of Insurance**  
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**Gardiner, Maine**

**DATE FILED:** June 21, 2006

**PARTY:** Maine Association of Health Plans

**DOCUMENT:** MEAHP's Opposition to Motions by CAHC and  
The Dirigo Board Regarding Additional Evidence

**DOCUMENT TYPE:** Opposition to Motions

**CONFIDENTIALITY:** None

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**STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE**

<b>IN RE: DETERMINATION OF</b>	)	<b>MEAHP'S OPPOSITION TO MOTIONS</b>
<b>AGGREGATE MEASURABLE</b>	)	<b>BY CAHC AND THE DIRIGO BOARD</b>
<b>COST SAVINGS FOR THE SECOND</b>	)	<b>REGARDING ADDITIONAL EVIDENCE</b>
<b>ASSESSMENT YEAR</b>	)	

Docket No. INS-06-900

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NOW COMES the Maine Association of Health Plans ("MEAHP"), by and through its counsel, with this Opposition to motions from Consumers for Affordable Health Care ("CAHC") and Board of Directors of the Dirigo Health Agency ("the Board"). As grounds for its opposition, MEAHP states as follows:

During the course of an extensive two-day adjudicatory hearing before the Board on May 8 and 10, 2006, the Board heard lengthy testimony from several witnesses (on both direct and cross examination as well as questioning by the Board itself), granted the introduction into the record of numerous exhibits, and admitted voluminous pre-filed testimony and exhibits. Although MEAHP believes that the record developed before the Board does not reasonably support the Board's decision, MEAHP does believe that the record was fully developed and should not be subject to supplementation after the fact.

**I. The Superintendent's Procedure Regarding Additional Discovery and Evidence**

With respect to the possibility of undertaking additional discovery and presenting evidence not considered by the Board, the Superintendent's June 15, 2006 Orders on Intervention and Procedures (the "June 15 Order") adopted the Superintendent's April 26, 2006 Notice of Pending Proceeding and Hearing (the "April 26 Notice"). Thus, the Superintendent's procedure regarding additional discovery and evidence is as follows:

- The record to be reviewed by the Superintendent is that which was filed by the Board with the Superintendent on June 9, 2006.
- Any party may file a motion to undertake additional discovery or present additional evidence.
- Any such motion must include “a detailed statement, in the nature of an offer of proof, of the discovery or evidence requested to be taken and the reason it is relevant to the Superintendent’s determination. That statement shall be sufficient to permit the Superintendent to make a proper determination as to whether the service of informational requests or the taking of additional evidence as presented in the motion and offer of proof is appropriate and if so to what extent.”
- “A party may serve limited informational requests or present additional evidence if the Superintendent finds that the new information or additional evidence is relevant to the issue presented in this proceeding and will not cause repetition or unreasonable delay in the proceeding.”

June 15 Order, p. 8.

CAHC and the Board both failed to satisfy the high threshold set forth in the June 15 Order, and so the Superintendent should deny their motions.

## **II. CAHC’s Flawed Motion**

CAHC seeks to gather additional information from DHA. Specifically, CHAC has posited two requests:

1. “Any expert analyses and/or reports, produced subsequent to the hearing before the Board ..., regarding the calculation CMAD, specifically the use of a 3-year median rate of growth as compared to a 3-year average rate of growth as set forth in Chamber Exhibit #21....” (emphasis added)
2. New information in the possession of the DHA which information was not available at the time of the hearing before the Board and that is relevant to the calculation of CMAD, CON/CIF, and the Uninsured....”

CAHC’s Motion, p. 2. Both requests are fatally flawed in light of the Superintendent’s June 15 Order.

CAHC’s first request for DHA’s analyses and/or reports regarding the projected baseline growth rate absent Dirigo for CMAD (the “projected growth rate”) is wildly untimely. The projected growth rate was the subject of extensive live testimony at the hearing as well as thorough pre-filed testimony. DHA, through Steve Schramm of Mercer, offered its evidence and

testimony as to what that projected growth rate should be, and the Chamber of Commerce (“Chamber”), through John Sheils, did the same. DHA and CAHC had every opportunity to cross-examine Mr. Sheils and to critique the numbers contained in Chamber Exhibit #21. DHA also had every opportunity to undertake the analyses and/or reports which CAHC now seeks before the hearing, and to present such analyses and/or reports with its pre-filed testimony or during its live testimony at the hearing. DHA’s failure to prepare such analyses and/or reports on the relevant issues prior to the hearing before the Board does not give it carte blanche to do so after the fact. The projected growth rate was a very live issue before the Board, and the Board determined that the rate offered by Mr. Sheils was reasonable.<sup>1</sup> The hearing before the Superintendent is not the forum in which to introduce evidence that could have been prepared and introduced during the hearing before the Board.<sup>2</sup>

CAHC’s second request is improperly broad and obtuse. It completely lacks anything resembling a supporting “detailed statement, in the nature of an offer of proof,” leaving the Superintendent (and the intervenors) with no understanding of the nature of the additional discovery sought or the additional evidence that CAHC hopes to present as a result of the additional discovery. Drafted as it is, CAHC’s second proposed request for information amounts nothing more than a blind fishing expedition, and it should be rejected by the Superintendent for failure to comply with the parameters of the June 15 Order.<sup>3</sup>

### **III. The Board’s Flawed Motion**

The Board seeks to introduce several putatively new sets of data that it claims were not available during the hearing before the Board:

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<sup>1</sup> It is worth noting that this is the only issue on which the Board deviated from DHA’s position.

<sup>2</sup> The DHA Board’s own request to present new evidence makes no mention of any analyses or reports by DHA regarding the projected growth rate.

<sup>3</sup> Again, the DHA Board has submitted its own request to present several sets of additional evidence, and so it seems odd that CAHC now seeks to undertake a fishing expedition in DHA’s waters.

1. Medicare cost reports (“MCRs”) for eight hospitals (even though the Board only has MCRs from four of the eight hospitals)
2. preliminary CON approvals for large hospitals
3. updated DirigoChoice enrollment data
4. updated DirigoChoice member survey data
5. updated Medicaid expansion data

Board’s Motion, p. 3. Additionally, the Board seeks to have Steve Schramm of Mercer testify about these sets of data. The Superintendent should reject the Board’s request for failure to comply with the procedures set forth in the June 15 Order.

Although the Board’s motion identifies several categories of data that it hopes to introduce, the Board’s motion fails to describe what information might be contained in the new documents or how it might impact the Board’s decision. According to the June 15 Order, the Board had an obligation to provide “a detailed statement, in the nature of an offer of proof”; instead it provided only a vague description of the general categories of data it hoped to introduce. Thus, the two relevant questions remain unanswered – (a) What information is contained in these sets of data?, and (b) What does this data mean vis-à-vis the Board’s decision? Without this critical information, it is impossible for the Superintendent to determine whether to allow this putatively new information. Therefore, the Superintendent should reject the Board’s motion.

#### **IV. MEAHP’s Reservation of Rights**

MEAHP believes that the record in this case was fully developed in the thorough two-day hearing before the Board. In the event that the Superintendent allows CAHC or the Board to introduce new evidence or offer additional testimony, however, MEAHP expressly reserves the right to do the following:

1. propound information requests upon the other parties in this proceeding as may be necessary to understand the basis for the additional evidence or testimony to be presented by CAHC or the Board; and

2. offer supplemental evidence and/or testimony as may be necessary to rebut the additional evidence or testimony to be presented by CAHC or the Board.

## **V. Conclusion**

For the reasons stated above, MEAHP asks that the Superintendent deny the motions from CAHC and the Board regarding further discovery and new evidence. Should the Superintendent allow additional discovery and/or new evidence, however, MEAHP asks that the Superintendent recognize that MEAHP has reserved its rights as described above.

Dated: June 21, 2006

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## **CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2006 (before 3:00 p.m.), the foregoing document titled MEAHP's Opposition to Motions by CAHC and The Dirigo Board Regarding Additional Evidence was served electronically and two copies served via U.S. mail upon:

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